

**ORIGINAL**

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Reliable Carriers, Inc. and  
Daniel Joseph Bemben

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**JOHN D. PERKEY and THERESA M.  
PERKEY,**

**Plaintiffs**

**vs.**

**RELIABLE CARRIERS, INC.,  
DANIEL JOSEPH BEMBEN and KENT,**

**Defendants**

**CIVIL ACTION NO. 1:CV-00-1639**

**JURY TRIAL DEMANDED**

**Magistrate Judge Smyser**

**FILED**  
**HARRISBURG, PA**

**JUN 13 2003**

**MARY E. D'ANDREA, CLERK**  
**Deputy Clerk**

**PRE-TRIAL MEMORANDUM OF  
RELIABLE CARRIERS, INC. AND DANIEL JOSEPH BEMBEN**

**DATE CONFERENCE WAS HELD BY COUNSEL:** June 6, 2003.

**A. STATEMENT AS TO FEDERAL COURT JURISDICTION:**

Plaintiffs' Complaint alleges jurisdiction under 28 U.S.C. § 1332 based upon diversity of citizenship and an amount in controversy exceeding the sum of \$75,000, exclusive of interest, attorney's fees and costs.

**B. STATEMENT OF FACTS AND CONTENTIONS AS TO LIABILITY:**

On September 15, 1998, at approximately 6:10 a.m., Plaintiff, John D. Perkey, ("Plaintiff") while employed by ABF Freight Co, was operating his tractor-trailer on I-76 (Pennsylvania Turnpike) near milepost 37.7 traveling eastbound. Defendant Bemben, while in the course and

scope of his employment with Reliable Carriers, Inc., was also traveling east on I-76 ahead of the Plaintiff when he was informed on his CB Radio by another truck that his left rear axle was on fire. Subsequently, before being able to stop, the left front trailer wheels broke off the axle of Defendant's tractor-trailer. The wheels continued to roll eastbound along I-76. Plaintiff encountered the wheels on the highway on the right-hand lane of travel. Plaintiff struck the wheels causing him to veer off the highway. Defendant Reliable Carriers, Inc., owned the trailer at the time of the accident. The Plaintiffs allege personal injury, which are described more fully in the Plaintiff's Pre-Trial Memorandum, wage loss and loss of consortium.

Defendants contend that they were not negligent in the maintenance and/or repair of the trailer, but properly maintained the trailer in accordance with the federal regulations. In addition, there are a number of other possible causes for the wheel separation. Furthermore, the wheel separation was out of the control of Daniel Joseph Bemben and Reliable Carriers, Inc. Accordingly, Defendants assert that they are not liable to the Plaintiffs. Defendants contend that Plaintiff sustained no injuries in this accident, which prevented him from continuing to work.

**C. COMPREHENSIVE STATEMENT OF UNDISPUTED FACTS:**

- 1) On September 15, 1998, at approximately 6:10 a.m., Plaintiff, John D. Perkey, was employed by ABF Freight Co.
- 2) At the same date and time, Plaintiff was operating his tractor-trailer on I-76 (Pennsylvania Turnpike) near milepost 37.7 traveling eastbound.
- 3) At the same date and time, Reliable Carriers, Inc., employed Daniel Joseph Bemben.
- 4) At the same time and place, Daniel Joseph Bemben was also traveling east on I-76.
- 5) At the same date and time, Reliable Carriers, Inc., owned the trailer.

**D. BRIEF DESCRIPTION OF DAMAGES:**

Plaintiffs' alleged damages are set forth in their Complaint. Defendants specifically deny that they are responsible for said alleged damages and injuries. Defendants demand strict proof of all damages claimed by Plaintiffs.

**E. NAMES AND ADDRESSES OF WITNESSES TO BE CALLED:**

Defendants may call some or all of the following witnesses at trial:

- A. Daniel Joseph Bemben - 41555 Koppismnick Drive, Canton, Michigan 48187
- B. Fred Purol – 41555 Koppismnick Drive, Canton, Michigan 48187
- C. Dr. Perry Eagle, orthopedic surgeon – 191 Leader Heights Road, York, PA
- D. Gabriel G. Alexander, P.E., engineer – 404 Commerce Park Drive, Cranberry Township, PA 16066;
- E. Paul Anderson, D.Ed., vocational expert – 2418 North Second Street, Harrisburg, PA 17110
- F. Roc Allen Nelson – 105 Spruce Street, Warroad, Minnesota 56763
- G. Officer Eric Valentine – Gibsonia Station, Pennsylvania

The Defendant reserves the right to call any witnesses listed by the Plaintiffs in their Pre-Trial Memorandum as on cross-examination, which may include:.

- A. John Perkey – 328 Pine Grove Road, Gardners, PA 17324
- B. Theresa Perkey - 328 Pine Grove Road, Gardners, PA 17324
- C. Dr. Roger H. Ostdahl – 920 Century Drive, Mechanicsburg, PA
- D. Dr. Rodney K. Hough – 49 Brookwood Avenue, Carlisle, PA 17013
- E. Dr. John S. Rychak – 99 November Drive, Camp Hill, PA

**F. SUMMARY OF TESTIMONY OF EACH EXPERT WITNESS:**

See Dr. Perry Eagle's report attached hereto as Exhibit "A."

See Gabriel G. Alexander, P.E.'s reports attached hereto as Exhibit "B."

See Paul Anderson, D.Ed's report attached hereto as Exhibit "C."

**G. SPECIAL COMMENT ABOUT PLEADINGS AND DISCOVERY:**

Pleadings and discovery are closed.

**H. SUMMARY OF LEGAL ISSUES:**

- A. Negligence of Defendants.
- B. Comparative Negligence of Plaintiff.
- C. Whether the negligence of Defendants was a substantial factor in causing or aggravating Plaintiff's injuries.
- D. Causation of Plaintiff's Injuries.
- E. Defendants reserve the right to supplement this list with appropriate notice to all counsel.
- F. Causation of the accident.
- G. Admissibility of Plaintiff's wage loss and medical expenses.
- H. Preclusions of Pennsylvania Motor Vehicle Financial Responsibility Law.
- I. Plaintiffs have failed to mitigate their damages.

**I. STIPULATIONS:**

There have been no stipulations at this time; however, Defendants would like to stipulate to the authenticity of Plaintiff's Medical Records.

**J. ESTIMATED NUMBER OF TRIAL DAYS:**

Three (3) days.

**K. OTHER PERTINENT MATTERS:**

Defendants' Voir Dire questions are attached hereto as Exhibit "D."